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SIPDIS

SENSITIVE  
DEPT FOR INL; SCT; EEB  
JUSTICE FOR AFMLS, CIA, OPDAT;  
TREASURY FOR FINCEN (BEZEK AND MICHAEL);  
EUR/WE (MARBURG AND ABBASZADEH);  
EUR/PPD (MCMANIS AND PIPKIN);  
LONDON FOR R. HUBER AND M. JOHNSON

E.O. 12958: N/A  
TAGS: [KCRM](#) [EFIN](#) [KTFN](#) [SNAR](#) [PGOV](#) [BD](#)  
SUBJECT: BERMUDA: 2009-2010 INTERNATIONAL NARCOTICS CONTROL STRATEGY  
REPORT (INCSR)

REF: 2009 STATE 114960

¶1. U.S. Consulate General Hamilton provides the following answers in response to questions for

the money laundering and financial crimes section of the 2009-2010 INCSR in REFTEL, referenced in parentheses.

#### GENERAL QUESTIONS

¶2. (18) Yes. An overseas territory of the United Kingdom (U.K.), Bermuda is considered an

important regional and global financial center. It is the third largest reinsurance center in the world and the second largest captive insurance domicile, with firms based in the jurisdiction writing significant volumes of business in the U.S. and U.K. It is not considered to be significant in terms of money laundering. Bermuda is not considered a major drug source or transshipment country; however, the majority of the money laundering that occurs in Bermuda is believed to be related to the domestic drug trade.

¶3. (19) Money laundering in Bermuda is related primarily to proceeds from domestic criminal

activity involving marijuana, cocaine, cocaine freebase and heroin. Amounts seized in 2008 were 241.2 kilos, 4.8 kilos, .22 kilos and .8 kilos respectively. The Island is an end-user jurisdiction in narcotics trafficking, rather than a transshipment point for drugs. Bermuda's drugs originate in South and Central America, using the Caribbean, the U.S. and to a lesser extent the U.K. as transshipment points into Bermuda. Money laundering proceeds are controlled primarily by gangs, which have proliferated in recent years. Public corruption does not contribute to money laundering/terrorist financing.

¶4. (20) There is no significant black market for smuggled goods in Bermuda.

¶5. (21) The Bermuda Monetary Authority (BMA) closely

supervises Bermuda's financial services

sector for prudential and Anti-Money Laundering/Combating Financing Terrorism (AML/CFT) purposes, and permits no unlicensed or unregistered entities to operate in this sector. There have been no cases of terrorist financing in Bermuda, and there was no significant increase in financial crimes in 2009. In December the Government of Bermuda (GOB) passed the Anti-Terrorism (Financial and Other Measures) Amendment Act 2009, effective January 13, 2010. In conjunction with that act, and in conformance with the U.S. and the U.K., the GOB will issue by January 15, 2010 a directive to sanction the Islamic Republic of Iran Shipping Lines (IRISL), which has obtained insurance through a company legally domiciled in Bermuda - the South of England Protection and Indemnity Association (SEPIA). The directive to SEPIA to cease doing business with IRISL would be effective immediately, with provision for winding up existing contracts within seven days. The GOB responded expeditiously and comprehensively to U.S. concerns on this issue.

There are cases where criminals utilize the formal financial sector for money laundering purposes, resulting in criminal investigations and pending prosecutions. There are no free trade zones, hawalas or other informal financial sector entities in Bermuda in which money laundering/financing terrorism occurs. There are four banks, one deposit company and two money service businesses involved in money transmission services, all of which the BMA licenses.

16. (22) The National Anti-Money Laundering Committee

HAMILTON 00000006 002 OF 012

(NAMLC) believes that the currency

used in Bermuda for payment to international narcotics traffickers is the U.S. dollar and that there have been cases where traffickers utilized the formal financial sector for money laundering purposes. The proceeds of narcotics trafficking may be destined for the U.S. or may pass through the U.S. for transmission to some other country.

17. (23) No, there are no indications that trade-based money laundering occurs in Bermuda. There

are no free-trade zones in Bermuda.

#### OFFSHORE FINANCIAL CENTERS

18. (24) Within the specific definition of the term provided, Bermuda is not considered an offshore

financial center as there is no distinction in how it regulates businesses operating in the local economy and those operating internationally from within Bermuda.

19. (25) No, Bermuda does not permit either shell companies or offshore banks. However, a

foreign bank may establish a subsidiary as a Bermuda company with its own board of directors, but may not establish a branch.

A large international business sector - including exempt companies - underpins the Island's economy. Section 92A of the Companies Act requires every company to maintain a register of directors and officers that is to be open for inspection by

members of the public.

¶10. (25a) To post's knowledge, Bermuda performs adequate background checks on applicants for

banking and business licenses for all entities.

¶11. (25b) According to the Registrar of Companies, at the end of September 2009, there were

13,634 exempted or international companies registered in Bermuda, 1,230 exempted partnerships, 536 overseas companies and 70 overseas partnerships. In March 2008, there were a total of 1,315 investment funds in Bermuda: 883 mutual funds, 80 umbrella funds, and 388 segregated accounts. There were also 106 unit trusts and 168 umbrella trusts.

Exempted companies are exempt from Bermuda laws that apply to local entities, including the restriction that at least 60 percent of local entities must be owned by Bermuda residents. Exempt companies are not subject to currency controls or capital controls, and they are free from all forms of direct taxation on income and capital gains. Therefore, exempt companies are normally prohibited from doing business in the local economy. The majority of exempt companies are not required to have a physical presence on the Island, but designate local directors (generally a local lawyer and secretary) to manage corporate affairs in Bermuda. Directors must be natural persons. Before exempt companies can be established or any shares transferred between nonresidents, the owners and controllers must be vetted by the BMA, the sole regulatory body for financial services.

¶12. (25c) Anonymous directors and trustees are not allowed.

HAMILTON 00000006 003 OF 012

¶13. (26) Lotteries, casinos, and gambling, including Internet gambling, are prohibited business activities. However, gambling that does not use gaming machines is allowed, including bingo, raffles, and Crown and Anchor. The Prohibition of Gaming Machines Act 2001 prohibits the importation of gaming machines and their parts and accessories. Casinos are illegal; a bill to allow cruise ship casinos to operate while in port was defeated in 2009. The Lotteries Act 1944 prohibits the import of foreign lottery material.

¶14. (27) The BMA regulates Bermuda's entire financial services sector. There are separate regulatory acts which apply to each sector (e.g. trusts, deposit taking, investment business etc.), but the requirements are the same whether the entity is operating solely within the local economy or operating from within Bermuda internationally. All classes of financial institutions required to be regulated under the Financial Action Task Force (FATF) standards are subject to customer due diligence, ongoing monitoring, record keeping and all other AML/ATF (Anti-Terrorist Financing) requirements, including the filing of Suspicious Activity Reports (SARs) for money laundering or terrorist financing.

FREE TRADE ZONES

¶15. (28-30) There are no free trade zones in Bermuda.

LEGAL FOUNDATION OF AML REGIME

¶16. (31) Bermuda has a robust legal framework as it relates to AML/CFT and is committed to

keeping up to date with international standards. There have been several waves of related legislation since the inception of money laundering regulation in 1997.

The Proceeds of Crime Act (POCA) 1997, as amended, is the foundation of the GOB's AML/ATF regulatory regime applying money laundering controls to financial institutions such as banks, deposit companies, and trust companies. Subsequent amendments expanded the scope of the legislation to cover the proceeds of all indictable offenses and added investment businesses, including broker-dealers and investment managers, to the list of regulated institutions. Trust service providers, lawyers and corporate service providers are now subject to the same customer due diligence, record-keeping and supervision arrangements as financial institutions.

With respect to anti-terrorism financing, the GOB enacted the Anti-Terrorism (Financial and Other Measures) Act (ATFA) in 2004 to criminalize terrorist financing and provide the framework to ensure implementation of the FATF Special Recommendations on terrorist financing. The Act makes it an offense to raise funds for terrorism, creates specific offenses relating to the raising, use, or possession of funds for purposes of terrorism, imposes a duty to report suspicious activity, and provides for the forfeiture of terrorist cash. The effect is to parallel the provisions already in place under the POCA for money laundering and the proceeds of other serious crimes. Financial institutions were directed to conduct full reviews of their clients against officially published lists of terrorist suspects. There has been no known identified evidence of terrorist financing in Bermuda.

In December 2009, to implement Schedule 7 of the UK Counter Terrorism Act 2009, the Bermuda Parliament passed the Anti-Terrorism (Financial and Other Measures) Amendment Act 2009 and the Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) Regulations 2009. The act and regulations are expected to be enacted on January 13, 2010 and are a very high priority for Bermuda. The Minister of Justice is empowered, under certain strictly defined conditions, to give directions

HAMILTON 00000006 004 OF 012

relating to enhanced due diligence, enhanced ongoing monitoring, systematic reporting and limiting/ceasing business. The BMA is designated as the supervisory and enforcement authority. Local and cross border wire transfers regulations aim to bring Bermuda into compliance with FATF recommendations. The legislation requires financial institutions to verify the accuracy of the information on the payer/originator before transferring funds, require financial institutions to retain for a period of five years, complete records on the payor/originator of the fund transfer, require financial institutions receiving wire transfers to maintain effective procedures to detect whether complete information on the payor/originator is received with the wire transfer and specify how the receiving institution should treat transfers with missing or incomplete information.

In March 2009 Bermuda updated the Revenue Act 1898 to strengthen the requirements relating to cross border transportation of currency and monetary instruments. The threshold for reporting is \$10,000. Mandatory declaration forms are used for all incoming passengers (regardless of point of embarkation) and for outgoing passengers to the US. For outgoing passengers to Canada and the U.K. there is a disclosure system in place. Additionally, goods, currency and negotiable instruments may be forfeited if not declared or are falsely declared. Penalties

for related offenses were increased and directors and officers of companies can now be charged.

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, which came into effect on January 1, 2009, give the BMA broader responsibilities and powers for monitoring and compliance enforcement of AML/CTF-regulated financial institutions. It formalized the requirements for customer due diligence, including for correspondence banking, and broadened the range of financial institutions, including trust service providers, lawyers and accountants. Financial institutions are required to take specified measures to compensate for higher risk when a customer has not been physically present for purposes of identification and must conduct enhanced customer due diligence for politically exposed persons (PEPs).

The GOB enacted the Proceeds of Crime (Supervision and Enforcement) Act 2008 (SEA) effective January 1, 2009, to establish a civil money penalty regime and to allow the BMA to use its regulatory powers to address AML/ATF breaches. The definition of "financial institution" under SEA includes insurers, but not reinsurers, licensed under the Insurance Act. The BMA has established a specialized AML/ATF unit to undertake its supervisory and monitoring functions, including both on-site and off-site monitoring.

Also effective on January 1, 2009, the Anti-Terrorism (Financial and Other Measures) Amendment Act 2008 essentially addressed the recommendations in the 2007 IMF Report relating to terrorism and terrorist financing. It broadens the meaning of "terrorism," and "terrorist financing" and adds the offences of "tipping-off," "organizing or directing others to commit offences," and "offences by bodies corporate, partnerships, and unincorporated associations." It also makes provisions for offenses by bodies corporate, and authorizes the Minister of Justice to make regulations for the purposes of detecting and preventing the financing of terrorism. The latter provision resulted in the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 relating to customer due diligence, ongoing monitoring, record keeping, etc.

Collective investment schemes (CISs) are regulated by the BMA, and fund administrators are regulated persons for the purposes of the POCA. To strengthen regulations, CISs, including hedge funds, are subject to the Investment Funds Act 2006, which came into effect in January 2007. The Investment Funds Act is the legal framework for regulating investment funds, which includes, in addition to mutual funds and unit trusts, other business vehicles that pool and manage investment monies. The act also required fund administrators in Bermuda to be licensed and subjects them to minimum standards and a code of conduct.

HAMILTON 00000006 005 OF 012

Licensees are also recognized persons for POCA purposes and are subject to compliance monitoring by the BMA. The BMA continues to apply differentiated requirements involving lighter regulation of schemes catering to institutional and sophisticated investors, with greater reliance on transparency and disclosure. The BMA is also able to conduct compliance checks of POCA procedures as carried out by CIS administrators.

The Insurance Amendment Act 2004 implemented a number of changes to Bermuda's insurance regime pursuant to the International Association of Insurance Supervisors' (IAIS) adoption of revised core principles for supervision. Further amendments to the Insurance Act were enacted in the summer of 2006 to upgrade provisions and powers to provide the BMA with the ability to comply with IAIS core principles, like those existing for banking and investments.

The amended Investment Business Act 2003 enhances the regulatory powers of the BMA, granting the BMA stronger intervention powers and clarifying certain provisions, such as the BMA's ability to cooperate with foreign regulatory bodies. Other provisions include measures to strengthen criminal and regulatory penalties. The Act also brought the Bermuda Stock Exchange (BSX) under the regulation of the BMA. In 2004, provisions were added to the Criminal Code Amendment Act to create specific offenses of insider trading and market manipulation in securities markets. Fines up to \$100,000 and prison terms of five years are in place for market manipulation and up to \$175,000 and seven years jail time for insider trading. These provisions are in addition to existing regulations of the Bermuda Stock Exchange that prohibit members from insider trading and market manipulation, on penalty of sanctions, including expulsion from the BSX.

In March 2009, the BMA issued Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-Money Laundering and Anti-Terrorist Financing, outlining and interpreting the legal and regulatory framework, indicating good industry practices, and assisting institutions to design and implement systems and controls to limit AML/ATF risks to institutions.

2006 Guidance Notes broadened the scope of the POCA regulations. The POCA includes "know your customer" requirements and provides for the monitoring of accounts for suspicious activity. Furthermore, the GOB performs due diligence on persons seeking to undertake business on the island. The vetting process is undertaken when an entity is incorporated. A personal declaration form must be submitted for beneficial owners of international businesses prior to incorporation. Similar requirements apply to proposals to transfer shares. Additionally, a company must detail its business plan and maintain a register of shareholders at its registered office.

The Basel Committee's Core Principles for Effective Banking Supervision are implemented through the Banks and Deposit Companies Act 1999. Banks and other financial institutions are required to retain records for a minimum of five years. Bermuda has not adopted bank secrecy laws, but like the UK, recognizes a banker's common-law duty of client confidentiality. Bankers and others are protected by law with respect to their cooperation with law enforcement officials. Bermuda law requires money transmission services to be conducted in association with a licensed deposit-taker, and conversion of funds is subject to bank reporting standards.

¶17. (32) No, Bermuda has no secrecy laws.

#### FINANCIAL SECTOR

¶18. (33) No, Section 53 of the Companies Act 1981 prohibits bearer shares.

¶19. (34) Responsibility for determining AML/CFT policy statutorily rests with the National Anti-Money Laundering Committee (NAMLC), which was created by POCA in 1997. The NAMLC now resides within the Ministry of Justice, and is headed by an independent National AML/CFT Chairman. Bringing together key ministries and departments - including the FIA, police, attorney general, director of public prosecutions, Ministry of Finance, and the BMA - the NAMLC advises the Minister of Justice in

HAMILTON 00000006 006 OF 012

relation to the detection and prevention of money laundering and terrorist financing in Bermuda, the development of a national plan of action, and the participation of Bermuda in the international effort against money laundering. The BMA supervises, regulates, inspects and secures compliance of financial institutions operating in or from Bermuda and assists other authorities in Bermuda with the detection and prevention of financial crime.



The Bermuda Monetary Authority is the sole regulatory body for financial services and is responsible for the licensing, supervision, and regulation of financial institutions, including those conducting deposit-taking, insurance, investment, and trust business in Bermuda. The BMA Amendment Act 2002 formalized the BMA's responsibilities to include assisting with the detection and prevention of financial crime. The BMA conducts on-site reviews and detailed compliance testing of financial institutions' AML/CTF controls. It engages in active perimeter policing responsibilities and has legal powers to undertake investigations of unlicensed persons suspected of breaching the regulations, although the BMA has not found it necessary to use these legal powers extensively. In 2008 Bermuda passed the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008, which designated the BMA as the supervisory body for securing compliance with the regulations by regulated entities. BMA officers have indicated that it needs more resources, including increased staffing, to handle its responsibilities.

¶20. (35) Yes, banks and other financial institutions are required to know and record the identity of customers. However, Bermuda's reporting framework currently is based only on a suspicion of money laundering or terrorist financing. Financial institutions are required to conduct customer due diligence on all customers and transactions without a threshold. Simplified due diligence is only permitted in certain limited statutorily-defined circumstances pertaining to specified types of financial products. There is no general statutory threshold for these purposes. However, in March 2009 Bermuda updated the Revenue Act 1898 to strengthen the requirements relating specifically to cross border transportation of currency and monetary instruments. The threshold for such reporting is \$10,000.

¶21. (36) Yes, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 require that records of a customer's identity and supporting evidence and records for business relationships and occasional transaction which are the subject of customer due diligence be kept for five years. In any case where a police officer has notified a relevant person in writing that particular records are or may be relevant to an investigation which is being carried out, the relevant person must keep the records pending the outcome of the investigation.

¶22. (37) Yes, all financial institutions are required to and do report suspicious transactions. Such reporting is mandatory for all persons who during the course of any trade, profession, business or employment acquire knowledge or suspicion of another person's involvement in money laundering. A failure to report this knowledge or suspicion to the Financial Intelligence Agency (FIA) is a criminal offence. There is no statutory threshold for the reporting of suspicious transactions.

¶23. (38) Yes, there is statutory protection for all persons who make the disclosure of any knowledge or suspicion of money laundering which comes to them during the course of their trade, profession, business or employment.

#### INFORMAL FINANCIAL SECTOR AND NONFINANCIAL BUSINESSES AND PROFESSIONS

¶24. (39) AML/CFT controls apply to all categories of financial institutions as defined by FATF, both bank and non-bank (NBFIs). Bermuda has not made Designated Non-Financial Businesses and Professions (DNFBPs) subject to reporting obligations, customer due diligence, etc., although the GOB is planning such legislation for 2010. However, some intermediaries, such as lawyers and accountants, are already included. Bermuda considers trust service providers, brokerage houses and money service businesses as financial institutions, so they are

covered.

#### FINANCIAL INTELLIGENCE UNIT (FIU)/INVESTIGATIONS

¶25. (40) Yes, Bermuda law establishes and authorizes funding for an FIU, although it is called a Financial Intelligence Agency (FIA) in Bermuda.

¶26. (41) Yes, Bermuda established the FIA in November 2008 to replace the FIU housed within the Police Department. The FIA operates as an independent agency within the Ministry of Justice. It has both operational and budgetary independence. It has a small staff, which the FIA has plans to augment.

¶27. (42) The FIA acts as an independent agency authorized to receive, gather, store, analyze and disseminate information relating to suspected proceeds of crime and potential financing of terrorism, received in the form of Suspicious Activity Reports (SARs). It does not have investigative or regulatory responsibilities.

¶28. (43) Yes, Section 16 of the Financial Intelligence Agency Act gives the FIA access to any information required for enquiry into a SAR. Sections 18 and 19 also allow for disclosure of information to relevant authorities. There are also the necessary gateways in place to allow for sharing of information with relevant authorities both domestically and internationally. In addition, although not required for sharing of information, the FIA has signed memoranda of understanding (MOUs) with a number of other FIUs to ensure efficient and effective cooperation.

¶29. (44) The FIA received 651 SARs in 2009. Of those, it referred 73 to investigatory authorities - the BPS, Bermuda Customs and the BMA. The GOB does not routinely keep statistics on the number of SARs actually investigated. The following information for 2008 was prepared especially in response to Michael Foot's Review of the U.K.'s offshore financial centers, released in October 2009.

Bermuda averaged 200-250 SARs per year from 2003-2008. Of those, only a fraction was investigated: 24 cases in 2008, four in 2007 and one in 2006. Local prosecutions for financial crime 2003-2008 were in the single digits, although there were prosecutions in other jurisdictions where Bermuda evidence contributed: sixteen in 2007 and ten in 2006. The courts seized proceeds of crime assets in 2008 amounting to \$45.7 million; assets confiscated that year were \$22.9 million. The POCA, as amended, provides protection from criminality resulting from a SARs filing.

¶30. (45) The FIA is responsible for analyzing SARs; the BPS, Bermuda Customs and the BMA investigate financial crimes. The BMA has indicated it needs additional staffing, and post believes that the BPS - currently engaged in combating anti-gang violence - would also benefit from additional staff.

#### ASSET FORFEITURE AND SEIZURE LEGISLATION

¶31. (46) There have been no arrests, prosecutions or convictions



for terrorist financing in Bermuda. Since January 2009 the BPS has arrested fifteen persons on suspicion of offences related to money laundering. Of the fifteen arrested, two people were charged and five people are waiting to be charged.

HAMILTON 00000006 008 OF 012

In the past five years there has been one prosecution and conviction for money laundering. This case was in October 2008 and involved monies resulting from drug trafficking (\$159,985) being sent to Trinidad and Tobago. The monies were sent through a variety of methods including the use of "nominees" (named recipient who is not the ultimate beneficiary), wire transfers, and ATM cards being sent to individuals in Trinidad and Tobago who then withdrew money using the ATM cards.

Bermuda has assisted a number of other jurisdictions in money laundering cases that have resulted in prosecutions.

132. (47) Yes, Bermuda has enacted asset forfeiture and seizure legislation. For persons convicted of money laundering, the POCA Amendment Act 2008 empowers the court to order the forfeiture of any property used for the purposes of the money laundering offense. Any payment received by a defendant in connection with a money laundering offense is subject to confiscation. Any agreement entered into for the purposes of money laundering is void.

The SEA Act empowers the BMA to impose civil penalties not exceeding \$500,000. The Customs Traveler Declaration form provides for reporting incoming transportation of currency and bearer negotiable instruments from all countries and outgoing transportation of currency to the US, and a disclosure system for the outgoing transportation of currency and bearer negotiable instruments to all countries, excluding the US.

When seized currency is suspected as being the proceeds of crime, Bermuda Customs is required to forward the case for investigation and prosecution by the relevant authority. The Revenue Amendment Act 2008 imposes a penalty of \$100,000 or a term of imprisonment between 2-10 years.

133. (48) There are no obstacles or disincentives to enacting asset seizure/forfeiture legislation.

134. (49) Bermuda's laws permit seizure of property directly related to the commission of a crime. Although real estate used in the cultivation of narcotics cannot be seized, it is possible to prevent it from being disposed of or otherwise used so as to deplete its value. Bank accounts and other property can be restrained also to prevent use or depletion. Substitute assets cannot be seized, unless made subject of a court order restraining the disposal of such property insofar as they represent realizable assets against.

135. (50) The Financial Crimes Unit (FCU) of the Bermuda Police Service (BPS) is responsible for carrying out investigations into and tracing of assets arising as proceeds from the commission of crimes. With the assistance of the Department of Public Prosecutions, the FCU is also responsible for seeking restraint orders to prevent the disposal/depletion of such assets. However, any investigating unit within the BPS conducting an investigation that gives rise to the discovery of property used in the commission of the crimes may seize such property under warrant. A magistrate may issue an order to freeze assets for a period not exceeding seven days.

Restraint orders are made where there are reasonable grounds to believe that a confiscation order may be made in relation to the case in the future. Accordingly, as long as an investigation or

prosecution is pending or in progress, restraint orders will usually remain in effect until the date a confiscation order is made in relation to that case or until the court otherwise orders termination.

Restrained funds are referred to the Accountant General's Department, but if they were in a bank account at the time of restraint, then they will remain with the bank in which the account resides. Cash which had been seized by the Police and retained under the Proceeds of Crime Act are deposited into the statutory Confiscated Assets Fund until the court makes further orders in relation to it.

HAMILTON 00000006 009 OF 012

A confiscation order is an order to the individual to pay an amount specified by the court on or before a stipulated date. There is no automatic procedure for restrained property to be converted immediately for satisfaction of the confiscation order. Therefore, in order to prevent the depletion of the restrained funds when a confiscation order takes effect and terminates the restraint order, then a charging order is usually coupled with the confiscation order. This means that if at the end of the stipulated time the confiscation order is not satisfied then further action can be taken against the charged property to satisfy the order.

The Department of Public Prosecution applies for a confiscation order and pays this sum to a court or directly to the Accountant General's Department. If the defendant fails to pay within the required time, the Department of Public Prosecutions returns to court to seek orders that will levy against his property. The court can name a receiver to manage the process of levying against the property.

The Minister of Finance has responsibility for the management of the seized assets. Pursuant to Section 55A(3) of POCA, the Minister of Justice and the Minister of Finance may authorize payments to be made out of the Confiscated Assets Fund, which are invested, with earned income returned to the fund. The money can be disbursed for purposes related to law enforcement: to investigate suspected cases of drug trafficking, terrorist financing and money laundering; to cover costs associated with the treatment and rehabilitation of drug addicts; to cover costs associated with the prevention and public education concerning drug abuse; to meet the expenses of the Department of National Drug Control; to train officials in the effective implementation of the provisions of POCA in relation to money laundering and in relation to terrorist financing; to satisfy an obligation of the Government of Bermuda to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise; to meet the expenses of the National Anti-Money Laundering Committee; to meet the expenses of the FIA; to meet the remuneration and expenses of a receiver appointed under POCA or the Anti-Terrorism (Financial and Other Measures) Act 2004; to pay compensation or costs awarded under POCA or the Anti-Terrorism (Financial and Other Measures) Act 2004; or to cover costs associated with the administration of the Confiscated Assets Fund. Post cannot make a judgment as to the GOB's capacity to manage seized assets.

136. (51) Yes, the banking community cooperates with enforcement efforts to trace funds and seize/freeze bank accounts.

137. (52) Yes, Bermuda law allows for civil as well as criminal forfeiture.

138. (53) Yes, the Bermuda government enforces existing asset seizure and forfeiture laws, and there are adequate police powers and resources. The asset seizure and forfeiture laws are set out in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA) and the Terrorism (United Nations Measures) (Overseas Territories) Order. Assets

can be frozen without delay.

139. (54) Yes, Bermuda does have an independent national system and mechanism for freezing terrorist assets. The Terrorism (United Nations Measures) (Overseas Territories) Order gives the Governor power to freeze terrorist assets. ATFA provides for 'enabling cash' to be forfeited if it is intended to be used for the purposes of terrorism; or is, or represents, property obtained through terrorism; or is property earmarked as terrorist property. Cash can be seized by an authorized officer ("authorized officer" means a police officer, a customs officer or an immigration officer) if he has reasonable grounds for suspecting that it is terrorist cash. An application for the forfeiture of the whole or any part of it may be made and the court may order the forfeiture if it is satisfied that it is terrorist cash.

144. (55) CONGEN Hamilton has not been able to obtain asset seizure/forfeiture dollar amounts for the past year or previous years; however, post believes that such seizures/forfeitures

HAMILTON 00000006 010 OF 012

have occurred.

145. (56) Yes, Bermuda has enacted laws for the sharing of seized assets with other governments and has negotiated Mutual Legal Assistance Treaties and other such agreements to allow for effective cooperation in this regard.

#### TERRORIST FINANCING

146. (57) Yes, Bermuda has criminalized the financing of terrorism. The act of terrorism is defined in section 3 of the Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA) and also the Terrorism (United Nations Measures) (Overseas Territories) Order 2001, which the U.K. enacted under its powers established by the United Nations Act 1946 and is applicable to Bermuda.

In December 2009, to implement Schedule 7 of the U.K. Counter Terrorism Act 2009, the Bermuda Parliament passed the Anti-Terrorism (Financial and Other Measures) Amendment Act 2009 and the Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) Regulations 2009. The act and regulations will become effective on January 13, 2010 and are a very high priority for Bermuda. The Minister of Justice will be empowered, under certain strictly defined conditions, to give directions relating to enhanced due diligence, enhanced ongoing monitoring, systematic reporting and limiting/ceasing business. The BMA is designated as the supervisory and enforcement authority. The act will also bring non-long term insurance companies as potential recipients of Directions for Systematic Monitoring and Limit/Cease business only, in respect of the risk associated with the proliferation of certain types of weapons. Local and cross border wire transfers regulations aim to bring Bermuda into compliance with FATF recommendations.

In relation to the financing of terrorism, pursuant to section 5 of ATFA and article 3(1) of the Terrorism (United Nations Measures)(Overseas Territories) Order, a person commits an offence if he invites another to provide money or other property, and intends that it should be used, or suspects that it may be used, for the purposes of terrorism; receives money or other property, and intends that it should be used, or suspects that it may be used, for the purposes of terrorism; provides money or other property, and knows or suspects that it will or may be used for the purposes of terrorism.

Pursuant to section 6 of ATFA, a person commits an offence relating to the use and possession if he uses money or other property for the purposes of terrorism or possesses money or other property, and intends that it should be used, or suspects that it may be used, for the purposes of terrorism.

Pursuant to section 7 (funding arrangements) of ATFA, a person commits an offence if he enters into or becomes concerned in an

arrangement as a result of which money or other property is made available or is to be made available to another, and he knows or suspects that it will or may be used for the purposes of terrorism.

The U.K. has extended to Bermuda by Order in Council a number of legislative measures to comply with UN requirements. These measures include: The Terrorism (United Nations Measures) (Overseas Territories) Order 2001; the Afghanistan (United Nations Sanctions) (Overseas Territories) Order 2001; and the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 and its 2002 amendments. The UK has not yet extended to Bermuda the Suppression of the Financing of Terrorism (Vienna Convention) or the UN Convention against Transnational Organized Crime 2000 (Palermo Convention), a situation that the IMF said in its 2008 review "should be remedied without delay." Although the GOB notes that the provisions of those conventions have largely already been incorporated into Bermuda's legislation, the government will work with the U.K. in 2010 to officially extend those conventions to Bermuda.

¶47. (58) Yes, Bermuda has circulated to its financial institutions all of the relevant lists relating to terrorist organizations/financiers. Bermuda did not identify, freeze, seize and/or forfeit terrorist-related assets in 2009.

¶48. (59) Bermuda does not have alternative remittance systems

HAMILTON 00000006 011 OF 012

such as hawala or hundi or black market exchanges. Money service businesses are required to be licensed by the financial services regulator for them to operate within the jurisdiction. Bermuda has a declaration/disclosure system in place to address cross border cash transactions.

¶49. (60) Charities are required to be registered with the Registrar General and to file annual accounts. The Ministry of Culture and Social Rehabilitation, the Ministry of Justice and the NAMLC are currently undertaking a review of laws and regulations related to non-profit organizations to ensure that they cannot be misused for financing terrorism.

#### CROSS-BORDER TRANSPORTATION OF CURRENCY AND NEGOTIABLE INSTRUMENTS

¶50. (61) Yes, there are statutory requirements for monitoring the cross-border transportation of currency and monetary instruments. In March 2009 Bermuda updated the Revenue Act 1898 to strengthen the requirements relating to cross border transportation of currency and monetary instruments. The threshold for reporting is \$10,000. Mandatory declaration forms are used for all incoming passengers (regardless of point of embarkation) and for outgoing passengers to the U.S. For outgoing passengers to Canada and the U.K. there is a disclosure system in place. Additionally, goods, currency and negotiable instruments may be forfeited if not declared or are falsely declared. Penalties for related offenses were increased and directors and officers of companies can now be charged.

In December 2009, Bermuda's Parliament passed The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Amendment Regulations 2009 authorizing the BMA to oversee wire transfers. The regulations will become effective on January 13, ¶2010. The legislation requires financial institutions to verify the accuracy of the information on the payer/originator before transferring funds, require financial institutions to retain for a period of five years, complete records on the payor/originator of the fund transfer, require financial institutions receiving wire transfers to maintain effective procedures to detect whether complete information on the payor/originator is received with the wire transfer and specify how the receiving institution should treat transfers with missing or incomplete information.

¶51. (62) No, cash declarations are not entered into a database, but smuggling reports are. The information for smuggling reports is shared with the BPS and FIA if they pertain to cash.

#### INTERNATIONAL COOPERATION

¶52. (63) Yes, Bermuda executed its first Tax Information Exchange Agreement (TIEA) in 1986 in a treaty between the United States, the United Kingdom, and Bermuda. Bermuda has similar arrangements with other jurisdictions. On January 12, 2009, the United States and the GOB signed a Mutual Legal Assistance Treaty (MLAT), authorizing authorities in the U.S. and Bermuda to request and obtain assistance from each other in criminal investigations and prosecutions and related administrative and other proceedings. The MLAT provides for cooperation between the U.S. and Bermuda in combating a wide variety of crimes, including economic crimes and money laundering, by facilitating the collection of evidence needed by authorities in one country but located within the other country.

¶53. (64) In June 2009, Bermuda moved onto the OECD's "white list" with the signing of the minimum required 12 TIEAs. As of December 21, 2009 Bermuda has signed 18 TIEAs with the Aruba, Australia, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, Japan, Mexico, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom and the United States. Bermuda expects to sign additional TIEAs in early 2010 with Belgium, Canada, Japan, Portugal, and Spain.

HAMILTON 00000006 012 OF 012

Bermuda is also a member of the Egmont Group of Financial Intelligence Units, in which information sharing is implicit. In May 2009, the FIA officially replaced the former FIU as the member of record in Egmont. Subsequently, the FIA signed Memoranda of Understanding (MOUs) to share AML/ATF information and intelligence with Armenia, Australia, Belgium, Canada, Indonesia, Korea, Monaco, Montenegro, the Netherlands Antilles, Nigeria, the Philippines, Romania, St. Vincent, United Arab Emirates, the United Kingdom, and the United States. Meanwhile, the GOB continues to pursue MOUs with other countries.

The BMA Amendment (No. 3) Act 2004 clarifies the power of the BMA to cooperate with other overseas authorities. Other laws also authorize the sharing of information with overseas regulators: the Banks and Deposit Companies Act 1999, the Trusts (Regulation of Trust Business) Act 2001 and the Investment Business Act 2003.

¶54. (65) Yes, Bermuda cooperates well with the United States and other governments investigating financial crimes relating to narcotics, terrorism, and terrorist financing.

¶55. (66) There are no known instances of refusals by the GOB to cooperate with foreign governments.

¶56. (67) No, the U.K. has not yet extended to Bermuda the Suppression of the Financing of Terrorism (Vienna Convention) or the UN Convention against Transnational Organized Crime 2000 (Palermo Convention), a situation that the International Monetary Fund said in its 2007 review "should be remedied without delay." Although the GOB notes that the provisions of those conventions have largely already been incorporated into Bermuda's legislation, the government will work with the UK in

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¶57. (68) Yes, Bermuda strives to adhere to international money laundering standards. Bermuda is a member of the Caribbean Financial Action Task Force, and the FIA is a member of the Egmont Group. Bermuda is also a member of regulatory standard-setting bodies for banking, insurance and investment business.

¶58. AMCONGEN Hamilton's points of contact are Douglas Boudreau (boudreaudr@state.gov) or Astrid Black (blackac@state.gov).  
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